

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BLUE SPIKE, LLC,

Plaintiff,

V.

TEXAS INSTRUMENTS, INC., *et al.*,

Defendants.

Civil Action No. 12-CV-499-MHS

LEAD CASE

JURY TRIAL DEMANDED

ORDER GRANTING BLUE SPIKE LLC’S MOTION TO DISMISS SHAZAM ENTERTAINMENT LTD.’S COUNTERCLAIM

On this day came for consideration Blue Spike, LLC's ("Blue Spike's") Motion to Dismiss Defendant Shazam Entertainment Ltd.'s ("Defendant's") Counterclaim for Violation of the Lanham Act (Dkt 1397) in the above-captioned proceeding pursuant to Federal Rules of Civil Procedure 12(b)(6). Having considered both Blue Spike's motion and supporting papers, and Defendant's opposition and supporting papers, the Court is of the opinion that said motion should be GRANTED as the actions of Blue Spike do not constitute a violation of Title 15 U.S.C. §1125(a), including statements Blue Spike made as follows:

Shazam Has Hit a Spike in the Road . . .

A Blue Spike to be exact. According to Blue Spike, LLC, a Texas based technology company, Shazam's infringement of its patent distills to this:



As an industry trailblazer, Blue Spike's CEO, Scott Moskowitz, has been an active author and public figure in the content management and monetization space, i.e. digital-watermarking or signal-recognition, since those technologies emerged, long before Shazam. A 1995 New York Times article—titled “TECHNOLOGY: DIGITAL COMMERCE; 2 plans for watermarks, which can bind proof of authorship to electronic works”—recognized Moskowitz's The Dice Company as one of two leading software start-ups in this newly created field. Forbes interviewed Moskowitz for “Cops Versus Robbers in Cyberspace,” a September 9, 1996 article about the emergence of digital watermarking and rights-management technology. Moskowitz has also testified before the Library of Congress regarding the Digital Millennium Copyright Act. He is an innovator who has personally advanced these technologies.

Dkt. 1397-1 (Shazam's Amended Answer and Counterclaim, Ex. A).

IT IS HEREBY ORDERED that Counterdefendant Blue Spike, LLC's Motion to Dismiss is hereby granted pursuant to Federal Rules of Civil Procedure 12(b)(6).

IT IS SO ORDERED.